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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/653,807	09/03/2003	Michel Andre Bachmann	80350-1110	4512
35023	7590	07/13/2005		
LUCE, FORWARD, HAMILTON & SCRIPPS LLP 11988 EL CAMINO REAL, SUITE 200 SAN DIEGO, CA 92130			EXAMINER MENDOZA, MICHAEL G	
			ART UNIT 3731	PAPER NUMBER

DATE MAILED: 07/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/653,807	BACHMANN, MICHEL ANDRE
	<b>Examiner</b>	<b>Art Unit</b>
	Michael G. Mendoza	3731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 02 May 2005.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1,2 and 4-32 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1,2,19-24,26-30 and 32 is/are rejected.

7)  Claim(s) 4-18,25 and 30 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All   b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_ .

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1, 2, and 4-32 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

2. Claims 4-10 are objected to because of the following informalities: Claim 4 depends on cancelled claim 3. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 27-29 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. It is unclear what is meant by "the second extremity a first stop".

### ***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 19-24, 30, and 32 are rejected under 35 U.S.C. 102(b) as being anticipated by Schmidt 4753086.

8. Schmidt teaches a ring comprising: a flexible band, comprising first and second extremities, the flexible band being designed to be closed near these two extremities by a closure system to form a closed ring, the closed ring having an internal contact surface with the biological organ and an opposite external surface; and wherein the closure system comprises a means of encircling united to the first extremity and arranged to evolve between: a de-latching configuration where the means of encircling forms an open collar freeing the second extremity; an a latching configuration where the means of encircling forms a closed collar designed to surround the second extremity so as to unite it with the first extremity, the closed collar presenting opposite front and rear faces between which an encircling opening extends, which is designed to accept the second extremity; wherein the means of encircling further comprises a male element and a female element, each of which is mounted integrally to the first extremity and mounted on or relative to the latter in such a way that, when they are connected together, the means of encircling is latched, forming the closed collar; wherein the means of encircling is arranged so as to pass reversibly between the de-latching and the latching configurations; wherein the female element defines an orifice and the male element comprises a tab configured to pass through the orifice; wherein each of the male and female elements is joined at one extremity to an external surface of the ring; and wherein the tab has a chamfered profile that facilitates introduction and passage of the tab through the orifice

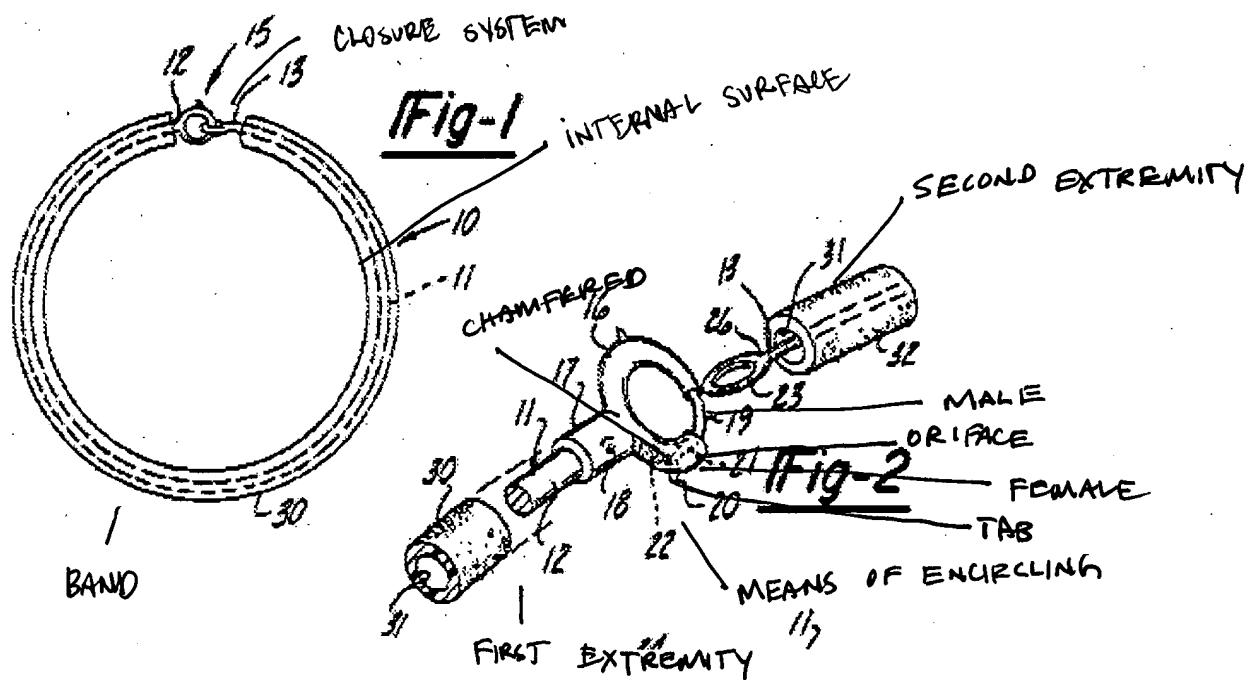
9. As to claims 19, 20, and 32. Schmidt teaches all of the structural limitations of claims 1 and 21. A recitation directed to the manner in which a claimed apparatus is

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intended to be used does not distinguish the claimed apparatus from the prior art – if the prior art has the capability to so perform. The ring of Schmidt is fully capable of being implanted around the stomach, esophagus, bladder, a urinary tract, a gastro-intestinal tract, and a blood vessel.

10. Claim 30 is rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Schmidt.

11. Claim 30 is a product-by-process claim. The product appears to be the same or similar to that of the prior art, although produced by a different process. In a product-by-process claim the product itself does not depend on the process of making it.



**Allowable Subject Matter**

12. Claims 4-18, 25, and 31 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Contacts***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael G. Mendoza whose telephone number is (571) 272-4698. The examiner can normally be reached on Mon.-Fri. 8:00 a.m. - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anh Tuan Nguyen can be reached on (571) 272-44963. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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*gk*  
GLENN K. DAWSON  
PRIMARY EXAMINER